

1 A I don't recall any notes or memoranda discussing --
2 witnessing such discussions.

3 Q Now, would you turn to page 3 of Glendale
4 Exhibit 209, please?

5 A Yes.

6 Q And the in the, in the last paragraph on the page a
7 little below halfway down you state as follows. "I reviewed
8 the draft -- " strike that, I'm sorry.

9 A I'm sorry. Okay. I have it now.

10 Q I'm, I'm really -- I'm going to start with the next
11 sentence which is the second sentence of that paragraph.
12 "With respect to the statement that 'at the present time
13 equipment for the station has not been ordered or delivered,'
14 I had on knowledge whether equipment had been ordered or
15 delivered and I so informed Mr. Schauble in our telephone
16 conversation." And my question to you, Mr. Gardner is, did
17 Mr. Schauble in that telephone conversation -- well, let me
18 just establish the telephone conversation we're talking about
19 there is the conversation you had with Mr. Schauble in
20 December 1991 to discuss the preparation of what became
21 Exhibit 1?

22 A Yes.

23 Q Okay. Now, in that conversation did Mr. Schauble
24 ask you whether equipment for the station had been ordered or
25 delivered?

1 A I don't recall that specific question.

2 Q Well, do you recall what it was that led you to tell
3 Mr. Schauble as you described in your written testimony that
4 you told him you had no knowledge whether equipment had been
5 ordered or delivered?

6 A It would appear that he asked me a question of that
7 nature.

8 Q And you recall informing him that you didn't have
9 any knowledge whether equipment had been ordered or delivered?

10 A Yes.

11 Q Now, following that conversation as you've testi-
12 fied, you received from Mr. Schauble a draft of Exhibit 1.
13 That's correct?

14 A Yes.

15 Q And when you received that draft did, did you see
16 the statement in the draft concerning the status of equipment
17 order?

18 A Where is -- can I look at the draft, I mean look at
19 the statement?

20 Q Well, you, you can look at -- if you're still on
21 Glendale 209 page 3 you can see the sentence in question --

22 A That's -- I see -- go ahead.

23 Q When, when you received the draft of Exhibit 1 from
24 Mr. Schauble did you see that the sentence drafted by
25 Mr. Schauble said, "At the present time equipment for the

1 station has not been ordered or delivered"?

2 A Yes.

3 Q Now, that was not what, what you had told
4 Mr. Schauble, is it?

5 A No.

6 Q Did you raise any question with Mr. Schauble when
7 you received the draft about that statement?

8 A I don't recall raising any question with
9 Mr. Schauble about that statement.

10 Q Is there any reason why you did not raise the
11 question with Mr. Schauble?

12 A Because I believed the statement to be accurate.

13 Q On what basis did you believe it to be accurate?

14 A Well, I didn't believe that there had been any
15 equipment ordered or delivered.

16 Q But you had no knowledge?

17 A That's correct.

18 Q Did you check with anyone to find out?

19 A No.

20 Q So, is it fair to say that you did not know that the
21 statement as drafted in Exhibit 1 was accurate?

22 A I believed it to be accurate, yes.

23 Q Well, you didn't know that though. I mean, you told
24 Mr. Schauble you didn't know. Isn't that right?

25 MR. SCHAUBLE: Objection. Argumentative.

1 JUDGE CHACHKIN: Sustained. This is to his
2 knowledge he believed it to be accurate. Do you have any
3 evidence it wasn't accurate?

4 MR. EMMONS: No, I have no evidence it was not
5 accurate.

6 JUDGE CHACHKIN: So, what, what are we making all
7 this argument about?

8 MR. EMMONS: Well --

9 JUDGE CHACHKIN: He relied on his knowledge. To his
10 knowledge it was, it was accurate.

11 BY MR. EMMONS:

12 Q Mr. Gardner, would you turn to your deposition page
13 100?

14 A 100?

15 Q Please.

16 A I couldn't hear the number.

17 Q Yes, 100. I'm sorry.

18 A 100. Yes.

19 Q And starting on line 10 there is the following
20 testimony. "Question: I'd ask you to focus on page 8004 and
21 at the beginning of the third paragraph there is the following
22 sentence. 'At the present time equipment for the station has
23 not been ordered or delivered.' Did you tell Mr. Schauble
24 that in your conversation about preparation of the
25 applications? Answer: Yes, I did." Now, was that testimony

1 true, at, at your deposition, Mr. Gardner?

2 MR. SCHAUBLE: Objection, Your Honor. I think --

3 JUDGE CHACHKIN: This is, this is really playing
4 around. I mean --

5 MR. EMMONS: Well, Your Honor --

6 JUDGE CHACHKIN: -- you're not claiming this is a
7 misrepresentation.

8 MR. EMMONS: No, but --

9 JUDGE CHACHKIN: The fact that he didn't add the
10 words to his knowledge or to, to this individual's knowledge,
11 it's a truthful statement. If it's a truthful statement what
12 are we arguing about it for? I mean, the, the question --
13 the, the issue I put in whether there was misrepresentations
14 made.

15 MR. EMMONS: Well, I --

16 JUDGE CHACHKIN: I mean, we could -- this is, this
17 is a quibble.

18 MR. EMMONS: All right, Your Honor.

19 JUDGE CHACHKIN: I don't see where we're -- he could
20 have been more precise in his language and said that he relied
21 on this individual's knowledge and to his knowledge there was
22 no equipment ordered. But the statement made to the
23 Commission was a true statement, there was no equipment
24 ordered or --

25 MR. EMMONS: All right. We can move on, Your Honor.

1 BY MR. EMMONS:

2 Q Mr. Gardner, Glendale Exhibit 209, page 7, please.

3 A Yes.

4 Q About eight or nine lines down, or about seven lines
5 down there is the following sentence. "I was relying upon Mr.
6 Schauble to ensure that the applications were complete and I
7 did not see anything which was missing from the applications."
8 Do you see that?

9 A Yes.

10 Q Now, does Exhibit 1 mention the fact that several
11 parties had approached Raystay and expressed an interest about
12 buying the construction permits?

13 A Exhibit 1, that's 245 isn't it?

14 Q Correct. Pages 3 and 4.

15 A Page 3 and 4. No.

16 Q So, that disclosure was missing from Exhibit 1,
17 correct?

18 MR. SCHAUBLE: Objection, Your Honor. That's a
19 characterization as to whether it was missing.

20 JUDGE CHACHKIN: Well --

21 MR. SCHAUBLE: What is, what is --

22 JUDGE CHACHKIN: -- statement is that it was -- from
23 Mr. Schauble to ensure that the applications were complete.
24 And I didn't see anything which was missing from the
25 application. The question that exists is why no mention was

1 made in the application as to ongoing negotiations and I think
2 that should be explored.

3 MR. SCHAUBLE: That wasn't the question. I have no
4 objection to that question, Your Honor.

5 JUDGE CHACHKIN: Is that what you're getting at,
6 Mr. Emmons?

7 MR. EMMONS: Well, as to what I'm getting at. I'll,
8 I'll ask that question.

9 JUDGE CHACHKIN: Go ahead.

10 BY MR. EMMONS:

11 Q Mr. Gardner, why did Exhibit 1 not mention the fact
12 that several parties had approached Raystay and expressed
13 interest in purchasing the low-power construction permits?

14 A John Schauble did not put that information in
15 Exhibit 1.

16 Q And I'd ask you the same question about why didn't
17 Exhibit 1 mention the fact that Raystay was trying to sell the
18 construction permits?

19 A John Schauble --

20 MR. SCHAUBLE: I, I object on the basis that there
21 is no predicate for that as of the time the applications were
22 being prepared.

23 JUDGE CHACHKIN: Is there -- did these conversations
24 take place --

25 MR. EMMONS: I think there is, Your Honor.

1 JUDGE CHACHKIN: -- at that time?

2 MR. EMMONS: Sir?

3 JUDGE CHACHKIN: Did these conversations take place
4 -- negotiations take place at the time that the extension
5 request was filed?

6 MR. EMMONS: That --

7 MR. SCHAUBLE: At, at this time, Your Honor, the
8 discussions with Trinity had been discontinued.

9 MR. EMMONS: There were other discussions, Your
10 Honor, which we haven't got to but we'll, we'll get to through
11 another witness with, with another potential buyer.

12 JUDGE CHACHKIN: Did you, Mr. Gardner, inform
13 Mr. Schauble about any ongoing negotiations that were taking
14 place or had taken place?

15 MR. GARDNER: Yes.

16 JUDGE CHACHKIN: Did you inform him about the
17 Trinity negotiations which had been discontinued?

18 MR. GARDNER: I believe I did, yes.

19 JUDGE CHACHKIN: Any other negotiations did you
20 advise him about which were of ongoing nature at that time
21 when the extension applications were filed?

22 MR. GARDNER: I'm not sure that I was that closely
23 aware of any other ongoing, ongoing negotiations that I
24 mentioned them.

25 JUDGE CHACHKIN: What negotiations besides Trinity

1 | did you discuss with Mr. Schauble if you recall?

2 | MR. GARDNER: Trinity is the only one that I do
3 | recall.

4 | JUDGE CHACHKIN: Go head, Mr. Emmons.

5 | BY MR. EMMONS:

6 | Q Mr. Gardner, why didn't Exhibit 1 mention the fact
7 | that what were described as lease negotiations with site
8 | owners constituted of a single telephone call in each case of
9 | no more than 60 seconds in duration with a person whose name
10 | you never asked?

11 | MR. SCHAUBLE: Objection to that last phrase. I'm
12 | not sure that -- those few words in there -- I'm not sure
13 | the --

14 | JUDGE CHACHKIN: I'll sustain the objection to the
15 | question as framed.

16 | BY MR. EMMONS:

17 | Q Mr. Gardner, why did the Exhibit 1 not mention the
18 | fact that the "lease negotiations" that were referred to in
19 | the exhibit consisted in each case of only a single telephone
20 | conversation of no more than 60 seconds in duration?

21 | A John Schauble prepared Exhibit 1 after he asked me a
22 | series of questions and I answered his questions and he chose
23 | not to put the statement in that you've just questioned.

24 | Q Did you raise any question with him about it in
25 | discussing Exhibit 1?

1 A I don't recall raising any question about it.

2 Q Would you give the same answer with respect to the
3 fact that the engineer referred to in Exhibit 1 was an
4 engineer of a prospective buyer and not of Trinity?

5 MR. SCHAUBLE: Objection to the form of the
6 question, Your Honor, would you give the same answer.

7 MR. GARDNER: Sustained.

8 BY MR. EMMONS:

9 Q Mr. Gardner, why did Exhibit 1 not mention the fact
10 that the engineer referred to in Exhibit 1 was an engineer of
11 a prospective buyer and not Trinity's engineer?

12 A During our phone conversations about the preparation
13 of Exhibit 1, John Schauble asked me a series of questions and
14 I answered his questions and he chose not to put that
15 statement into Exhibit 1.

16 Q I think I misspoke in phrasing that question. I
17 referred to Trinity's engineer and I meant Raystay's engineer.

18 A Okay. I was referring to Trinity's -- the question
19 of identifying Trinity's engineer when I answered your
20 question just now.

21 Q Understood. Thank you. Mr. Gardner, why did
22 Exhibit 1 not mention the fact that the reason for the
23 telephone call made to the site owners was simply to arrange
24 -- to ascertain whether the site was available and to arrange
25 a visit for the buyer's engineer?

1 A In the preparation of Exhibit 1, John Schauble asked
2 me a series of questions and I responded to his questions and
3 John Schauble chose not to put a reference to that statement
4 in Exhibit 1.

5 Q And why did Exhibit 1 not mention the fact that as
6 of the time Exhibit 1 was filed with the Commission Raystay
7 had not yet developed a viable business plan for the low-power
8 stations?

9 A In the preparation of Exhibit 1, John Schauble asked
10 me a series of questions and I answered his questions and John
11 Schauble chose not to put a statement about why a, a business
12 plan had not been consummated for the LPTV construction
13 permits.

14 Q Now, there came a time did there not when the FCC
15 granted the four extension applications that were filed in
16 December 1991?

17 A Yes.

18 Q Would you turn to TBF Exhibit 247, please?

19 A Yes.

20 Q And I will tell you that what, what these are the
21 construction permits as extended by the Commission based upon
22 the December 1991 applications. There are four of them.
23 They're separated in this exhibit by blue divider pages.

24 A Yes.

25 Q My question is, did you receive copies of these

1 extended construction permits from the Commission?

2 A Yes.

3 Q And you kept -- you, you placed them in your files?

4 A Yes.

5 Q And when you received them did you notice that the
6 expiration date given for the extended permits was listed as
7 reflected in the upper right-hand corner of the first page as
8 being July 29, 1992?

9 A I don't know that I noticed the exact date.

10 Q Did -- were you aware that they had been granted for
11 a period of six months?

12 A I was aware that they were granted for a, a short
13 period of time. I'm not sure I was aware it was exactly six
14 months.

15 Q All right. Did there come a time when you were
16 involved in preparation of a second set of extension
17 applications for these four permits, and, and I'm referring to
18 the two Lebanon and the two Lancaster permits?

19 A Yes.

20 Q And would you generally describe how you became
21 involved in that process?

22 A I became aware at some point in time that they need
23 -- the LPTV construction permits would expire if they were not
24 extended through communications with the law firm of Cohen &
25 Berfield.

1 Q Okay. Now, would you turn to TBF Exhibit 249,
2 please?

3 A Yes.

4 Q This s a letter dated June 29, 1992, from John
5 Schauble to David Gardner via facsimile. And my question is,
6 did you receive this letter on or about June 29, 1992?

7 A I believe that I did, yes.

8 Q And the letter refers to an enclosure. Do, do you
9 recall an enclosure being included with this letter?

10 A I don't exactly recall it being enclosed, but I
11 believe that I received Exhibit 1 in regards to this letter.

12 Q And when you say Exhibit 1, you're referring to the,
13 the Exhibit 1 that had been filed with the December 1991
14 applications?

15 A Yes.

16 Q The, the very same Exhibit 1?

17 A Yes.

18 Q Now, did you review that Exhibit 1 upon receiving it
19 from Mr. Schauble?

20 A Yes.

21 Q And did you do that on the same day that you
22 received it?

23 A I don't recall if it I did it on the same day or
24 not.

25 Q Now, upon -- after reviewing Exhibit 1, did you call

1 Mr. Schauble to discuss it?

2 A After reviewing it either I called John Schauble or
3 he called me, yes.

4 Q And did you have a discussion about, about Exhibit 1
5 at that point?

6 A Yes.

7 Q And what did you tell Mr. Schauble?

8 A Again, John Schauble asked me some questions and I
9 answered his questions.

10 Q And thereafter did you receive from Mr. Schauble the
11 letter that is contained in TBF Exhibit 250?

12 A Yes.

13 Q And did that letter enclose four LPTV applications
14 as, as the first sentence of the letter reflects?

15 A I believe at some point I did -- I -- at some point
16 I did receive the four LPTV applications, yes.

17 Q And when you received them what did you do with
18 them?

19 A I reviewed them and prepared them for signatures.

20 Q Now, did you, did you make any changes in, in what
21 Mr. Schauble had sent you in Exhibit 1?

22 A I don't believe I made any changes.

23 Q And in your conversation with Mr. Schauble that you
24 had right after you first received the letter of June 29, did
25 you recommend or suggest or request Mr. Schauble to make any

1 | changes in the draft of Exhibit 1 that he had enclosed in that
2 | letter?

3 | A I don't believe I recommended any changes other than
4 | possibly -- for, for whatever reason, the, the name Raystay
5 | Company was incorrect on the original -- possibly even on the
6 | original application and I remember from time to time
7 | suggesting that we ought to correct the name and Mr. Schauble
8 | said that that was the name that it had been granted in by the
9 | Commission and that we should leave it as it is.

10 | Q And the correction you had in mind had to do with
11 | whether the word company was spelled out in full or whether it
12 | was spelled as C-O, period?

13 | A Correct.

14 | Q Now, before signing off -- completing your review
15 | of, of Exhibit 1, did you contact Mr. Hal Etsell for any
16 | update on his activities with regard to the low-power
17 | stations?

18 | A I did not.

19 | Q And once you completed your review of these
20 | applications, what did you do with them physically?

21 | A I don't recall on my own exactly what happened.
22 | However, in preparations for these proceedings I, I believe
23 | that Lee Sandifer was not available at that time and therefore
24 | I would given them directly to George Gardner for signatures.
25 | But I don't recall that independently.

1 Q Do you recall receiving back from George Gardner
2 signed applications?

3 A I don't recall that independently, but the
4 applications were submitted with his signature on them so I
5 must have received them back, yes.

6 Q Now, would you, would you turn to TBF Exhibit 251,
7 please, and tell me if these are the four applications that
8 were submitted to the FCC in July 1992?

9 A Yes, they appear to be.

10 Q Now, did you have any communication with George
11 Gardner about the statements in Exhibit 1 of these
12 applications before George Gardner signed them on July 7,
13 1992?

14 A I don't recall if I had any, had any discussions
15 with George Gardner about these applications or not.

16 Q I take it then you did not contact -- you did not
17 initiate a contact to George Gardner to explain anything in
18 Exhibit 1.

19 A I don't recall if I initiated any conversations with
20 George Gardner about these applications or not.

21 Q And, and you don't recall him asking you any
22 questions about it?

23 A I don't recall whether or not he asked me any
24 questions on them.

25 Q And I take it you had no communication with

1 Mr. Sandifer about Exhibit 1 as filed in July 1992 since
2 you've testified that you understand that he was on vacation
3 at that time.

4 A You mean prior to their being signed?

5 Q Prior to their being signed, correct.

6 A If he was on vacation I would expect I did not have
7 any communication with him.

8 Q Did you have any communication with anyone else at
9 Raystay about Exhibit 1 before it was signed in July 1992?

10 A I don't recall if I had any communication with
11 anybody at Raystay or not prior to these applications being
12 signed.

13 Q Now --

14 JUDGE CHACHKIN: Your answer would be the same --
15 prior to the applications being filed with the Commission?

16 MR. GARDNER: Yes.

17 BY MR. EMMONS:

18 Q You've, you've testified that part of your job
19 responsibility was to work with FCC counsel in, in preparing
20 filings to the FCC for Raystay and my question is, had you
21 ever specifically been assigned to duty in that connection of
22 verifying the accuracy of statements that were submitted to
23 the FCC by Raystay?

24 A I have no specific written duty to do that.

25 However, in my many years of working with the Commission and

1 in any business proceeding I've always tried to be accurate.

2 Q Well, did, did George Gardner give you any standing
3 instructions about procedures to follow for verifying the
4 accuracy of statements to the Commission?

5 A I would not say that I've received any specific
6 instructions about procedures I should use about verifying
7 accuracy, no.

8 Q Well, were there at the, at the time, and now I'm
9 referring to late-1991 and early-1992 and mid-1992 when these
10 two sets of applications were filed, were there any procedures
11 in place at Raystay for verifying the accuracy of, of
12 applications or statements submitted to the FCC?

13 A It was my own personal belief that everything that I
14 do should be accurate and I have worked with George Gardner
15 for many years and I know that he believed that I was accurate
16 when I did things.

17 Q Well, just, just for an example, let me ask you what
18 if any procedures were you following in July 1992 when you
19 approved the statement in Exhibit 1 that Raystay was having
20 continuing negotiations with cable operators without having
21 checked with Mr. Harold Etsell to ascertain what he was doing
22 in that regard, if anything?

23 A Well, I was in contact with Harold Etsell.

24 Q Well, I, I thought you testified a while earlier
25 that you did not contact Mr. Etsell about any of the

1 statements in Exhibit 1 before you approved Exhibit 1 for
2 filing in July 1992.

3 A I took that to mean in the time reference between
4 the time I received the exhibits and got them signed. That,
5 that was my --

6 Q Right, and in that time reference you did not, you
7 did not make any check with him?

8 A No.

9 Q Now, you've testified earlier that your normal
10 practice is to submit proposed filing -- proposed FCC filings
11 to Lee Sandifer first for review before they are then
12 submitted to George Gardner. That, that would be the normal
13 practice, correct?

14 A Yes.

15 Q Now, what is the normal practice, if there is a
16 normal practice, when Mr. Sandifer is not available to perform
17 such a review?

18 A There is no normal practice because they -- that is
19 a very infrequent happening, so I went direct to George
20 Gardner.

21 Q Now, it is correct is it not that as of the time
22 that the second set of extension applications were filed in
23 July 1992 Raystay still had not started construction of the
24 Lebanon or Lancaster low-power stations?

25 A That's a correct statement. I lost your question in

1 the middle of it, but that's a correct statement if that's
2 your question.

3 Q Well, an uncertainty about what the question was?
4 Because I don't --

5 A Okay. Could you repeat the question, please?

6 Q Right. I will repeat the question. It is correct
7 is it not that when Raystay filed the extension applications
8 to the FCC in July 1992 there was still no construction
9 started on the Lebanon or Lancaster low-power stations?

10 A That's a correct statement.

11 Q And what did you understand at that time was the
12 reason why no construction had started?

13 A George Gardner had not authorized construction.

14 Q And do you know why that was the case?

15 A I believe -- my belief was that Raystay was still
16 trying to put together a viable, profitable business plan to
17 operate the stations once they would be constructed.

18 Q Now, why was that not mentioned in Exhibit 1 as
19 filed in July 1992?

20 A When John Schauble asked me a series of questions
21 about Exhibit 1 in July of 1992, I answered his questions and
22 at the end of the conversation he determined that we should --
23 that Raystay should use Exhibit 1 the way it was submitted to
24 the Commission in December of 1991.

25 Q Now, between December 1991 and July 1992, did

1 Raystay conduct any lease negotiations with either the Lebanon
2 or the Lancaster site owners?

3 A No. Not to my knowledge. I did not.

4 Q Did you know of anyone who, who had?

5 A I had no reason to believe anybody else was.

6 Q And between December 1991 and July 1992, did Raystay
7 or did anybody on behalf of Raystay to your knowledge visit
8 the Lebanon or Lancaster transmitter sites?

9 A It's possible that I did. However, it would have
10 been just a brief visit where I would have driven up to it in
11 my car.

12 Q Well, you say it's possible you did. Are you
13 speculating or do you specifically know that you did?

14 A I don't have specific knowledge that I did during
15 that time period.

16 Q Are you aware of any visit to either the Lebanon or
17 Lancaster site by a Raystay engineer between December 1991 and
18 July 1992?

19 A No.

20 Q Now, would you turn to Glendale Exhibit 209, please,
21 page 7? That's your direct testimony.

22 A Yes.

23 Q And in the third line from the bottom of the page
24 where you are discussing the conversation you had with
25 Mr. Schauble in late-June 1992 in preparation of the July

1 filing, you said, "I generally recall informing Mr. Schauble
2 that we were continuing to do what we had done previously but
3 that no additional measures were being taken."

4 A Yes.

5 Q Exactly what did you tell Mr. Schauble that you were
6 continuing to do?

7 A I don't recall specifically what I told him we
8 were -- Raystay was continuing to do. However, John Schauble
9 read -- or posed questions based on Exhibit 1 and I explained
10 to him what we were doing at the time.

11 Q And you explained to him did you not that in your
12 words, "no additional measures were being taken"?

13 A I recall explaining that no additional measures were
14 being taken, generally, yes.

15 Q Now, would you go back to TBF Exhibit 249, please?
16 This is the letter of June 29, 1992, from Mr. Schauble to you.

17 A Yes.

18 Q In which he encloses apparently a draft of Exhibit 1
19 and says in the middle of the first paragraph, "Please let me
20 know if any additional planning has been done that we can use
21 to convince the Commission that Raystay has been diligent in
22 working to get the stations on the air. If there are such
23 facts, I will modify the exhibit. Otherwise, we will use the
24 same exhibit." And my question to you, Mr. Gardner is, that
25 since the decision was made to -- not, not to modify Exhibit 1

1 but simply to file the Exhibit 1 as had previously been filed
2 with no changes, is it fair to say that you believed that
3 there were no new facts that could be presented to the FCC
4 that would help the -- help persuade the FCC to grant a second
5 extension?

6 MR. SCHAUBLE: Objection, Your Honor. I think he's
7 mixing apples and oranges here. In the -- I don't, I don't
8 have any objection to a question as to what the witness knew
9 as to what if anything was taking place between December 1991
10 and July 1992. But I think there, I think there are two --

11 MR. EMMONS: Well --

12 MR. SCHAUBLE: But, but I think there is --

13 JUDGE CHACHKIN: Objection is overruled.

14 MR. GARDNER: Could you repeat the question, please?

15 BY MR. EMMONS:

16 Q Is it fair to say that when you reviewed and
17 approved the filing of Exhibit 1 in July 1992, that you
18 believed that there were no new facts that could be presented
19 to the Commission to persuade the Commission to grant a second
20 extension?

21 A No, that's not true.

22 Q It's not true? Well, would you turn to your
23 deposition page 180, please?

24 A Could I explain my answer first?

25 Q Well, let me -- I want to take you to your

1 deposition first.

2 A Okay.

3 Q Page 180, starting on line 4 following your
4 testimony. "Question: Is it fair to say then that you
5 believed there were no new facts that could be presented to
6 the Commission that would help persuade the Commission to
7 grant a further extension? Answer: That was my
8 determination, yes." Now, was that truthful when you gave it?

9 A Yes.

10 Q And is it still truthful?

11 A Yes.

12 MR. SCHAUBLE: Your Honor, could the witness be
13 given an opportunity to --

14 JUDGE CHACHKIN: I'll give him an opportunity to
15 explain at this juncture. Go ahead.

16 MR. GARDNER: Yes. In my discussion with John
17 Schauble I discussed some things that Raystay was doing in
18 regards to trying to get the LPTV construction permits on the
19 air. I don't recall what those things were. John Schauble
20 said that none of the things that I was discussing would have
21 any -- I'm, I'm, I'm searching for words -- he said that they
22 did not have any relevance for the Commission, they were more
23 things that were important to Raystay but weren't important to
24 the Commission. So, he said I suggest we leave Exhibit 1 the
25 way it is and I made the determination at that point to take

1 John Schauble's advice.

2 BY MR. EMMONS:

3 Q Now, you did know at the time though, Mr. Gardener,
4 didn't you that Raystay was actively trying to sell the low-
5 power construction permits?

6 A I did not know that Raystay was actively trying to
7 sell the construction permits except for some negotiations
8 that possibly Lee Sandifer still was in which had been going
9 on for a long time, and also for at least one letter that I
10 wrote.

11 Q Well, let's, let's look at that letter. I think
12 you're referring are you not to TBF Exhibit 248?

13 A 248, yes.

14 Q And what, what was that letter? What were you
15 trying to do in that letter?

16 A I was trying to get a response from these people to
17 see if they were interested in buying the LPTV construction
18 permits.

19 Q And was that effort on your part consistent with
20 George Gardner's instructions?

21 A I don't believe that it went counter to George
22 Gardner's instructions.

23 Q Let me ask you to look back to TBF Exhibit 238 for a
24 minute. That's in Volume 3-C.

25 A Yes, I have it.